

Application No. (if known): 10/088,926

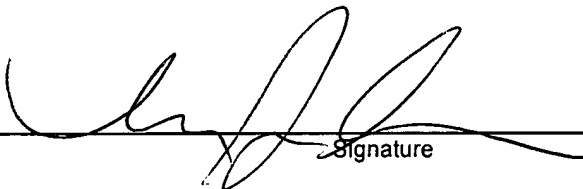
Attorney Docket No.: 01329/000K329-US0

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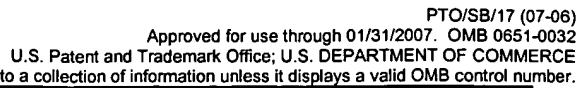
Transmittal of Appeal Brief (1 page)

Fee Transmittal (1 page)

Appellants' Brief on Appeal Under 37 C.F.R. § 41.37 (17 pages, in triplicate)

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Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

Complete if Known

Application Number	10/088,926-Conf. #2678
Filing Date	March 20, 2002
First Named Inventor	Timo Juhani Kangas
Examiner Name	J. H. Zurita
Art Unit	3625
Attorney Docket No.	01329/000K329-US0

METHOD OF PAYMENT (check all that apply)

☒ Check
 ☐ Credit Card
 ☐ Money Order
 ☐ None
 ☐ Other (please identify): _____

☐ Deposit Account
 Deposit Account Number: 04-0100
 Deposit Account Name: Darby & Darby P.C.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

<input type="checkbox"/> Charge fee(s) indicated below	<input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee
<input checked="" type="checkbox"/> Charge any additional fee(s) or underpayment of fee(s) under 37 CFR 1.16 and 1.17	<input checked="" type="checkbox"/> Credit any overpayments

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
		<u>Small Entity</u>		<u>Small Entity</u>		<u>Small Entity</u>	
<u>Application Type</u>	<u>Fee (\$)</u>	<u>Fee (\$)</u>	<u>Fee (\$)</u>	<u>Fee (\$)</u>	<u>Fee (\$)</u>	<u>Fee (\$)</u>	<u>Fees Paid (\$)</u>
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

<u>Total Claims</u>	<u>Extra Claims</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
- =	x	=	

HP = highest number of total claims paid for, if greater than 20.

<u>Indep. Claims</u>	<u>Extra Claims</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
-	=	x	=

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE


If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>Number of each additional 50 or fraction thereof</u>	<u>Fee (\$)</u>	<u>Fee Paid (\$)</u>
- 100 = _____	/50	(round up to a whole number) x _____	= _____	

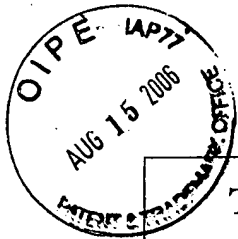
4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge):	1402 Filing a brief in support of an appeal	500.00
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SUBMITTED BY			
Signature		Registration No. (Attorney/Agent)	47,698 Telephone (212) 527-7700
Name (Print/Type)	Richard J. Katz	Date	August 15, 2006

Express Mail Label No. _____ Dated: _____



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TRANSMITTAL OF APPEAL BRIEF

Docket No.
01329/000K329-US0

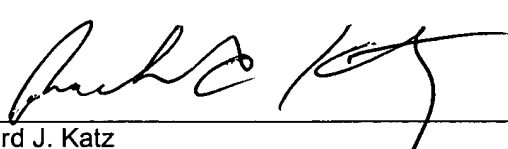
In re Application of: Timo Juhani Kangas

Application No.	Filing Date	Examiner	Group Art Unit
10/088,926-Conf. #2678	March 20, 2002	J. H. Zurita	3625

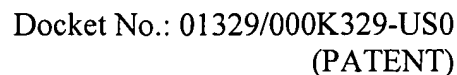
Invention: METHOD AND ARRANGEMENT FOR DISTRIBUTING INFORMATION AND SERVICES THROUGH A NETWORK

TO THE COMMISSIONER OF PATENTS:Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed: June 15, 2006.The fee for filing this Appeal Brief is \$ 500.00.☒ Large Entity ☐ Small Entity☐ A petition for extension of time is also enclosed.

The fee for the extension of time is _____.

☒ A check in the amount of \$ 500.00 is enclosed.☐ Charge the amount of the fee to Deposit Account No. 04-0100.
This sheet is submitted in duplicate.☐ Payment by credit card. Form PTO-2038 is attached.☒ The Director is hereby authorized to charge any additional fees that may be required or credit any overpayment to Deposit Account No. 04-0100.
This sheet is submitted in duplicate.
Richard J. Katz
Attorney Reg. No. : 47,698
DARBY & DARBY P.C.
P.O. Box 5257
New York, New York 10150-5257
(212) 527-7700Dated: August 15, 2006

Express Mail Label No. _____ Dated: _____



**In re Patent Application of:
Timo Juhani Kangas**

Application No.: 10/088,926

Confirmation No.: 2678

Filed: March 20, 2002

Art Unit: 3625

For: METHOD AND ARRANGEMENT FOR
DISTRIBUTING INFORMATION AND
SERVICES THROUGH A NETWORK

Examiner: J. H. Zurita

APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 41.37

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

08/18/2006 BABRAHA1 00000006 10088926
01 FC:1402 500

Dear Sir:

Appellants submit this brief in accordance with 37 C.F.R. § 41.37 in support of their appeal from the Final Office Action, mailed December 15, 2005 by Examiner Khanh Q. Dinh, and the Advisory Action, mailed June 7, 2006, in the above-identified patent application.

In accordance with 37 C.F.R. §§ 41.31 and 41.37, this brief follows the June 15, 2006 filing of a Notice of Appeal and payment of the required fee. This brief is in support of said Notice of Appeal. Appellants submit that this Appeal Brief is timely filed, and requires no extension of time fee. However, the Commissioner is hereby authorized to charge any unpaid fees deemed required in connection with this Appeal Brief, or to credit any overpayment, to Deposit Account No. 04-0100.

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is Tecnomen Oyj. The inventor having assigned his rights in and to this application to Tecnomen Oyj, such assignment having been duly recorded.

II. RELATED APPEALS AND INTERFERENCES

To appellants' knowledge, there are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Claims 1-13 are pending in the application.

This appeal is in respect of the rejection of claims 1-13.

There are 13 claims pending in the application, *i.e.*, claims 1-13. They are reproduced in the **Claims Appendix**. The current status of the application's claims is as follows:

1. Claims canceled: none;
2. Claims withdrawn from consideration but not canceled: none;
3. Claims pending: 1-13;
4. Claims allowed: none;
5. Claims rejected: 1-3.

Claims 1, 8, 9, 11, and 12 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-6 and 8-10 stand rejected under 35 U.S.C. § 102(b) as

being anticipated by U.S. Patent No. 5,794,210 to Goldhaber et al. ("Goldhaber"). Claims 7 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Goldhaber in view of the Examiner's statement of what was known in the art at the time of the invention.

For the purpose of the present appeal, Appellants request that (1) claims 1, 8, 9, 11 and 12 be considered to form a first group; (2) claims 1-6 and 8-10 be considered to form a second group; and (3) claims 7 and 13 be considered to form a third group.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the December 15, 2005 Final Office Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed invention is directed to an apparatus and method for distributing information or services through a computer or cellular network. A piece of information or service to be distributed through the network is composed, and a list of intended recipients is compiled. A preliminary order for crediting accounts associated with the intended recipients is transmitted through the network. The piece of information or service is released so that the piece of information or service becomes accessible to the recipients appearing on the list. As a response to an indication of a certain recipient having accessed the piece of information or service, an account associated with said certain recipient is credited.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1) Whether claims 1, 8, 9, 11, and 12 can properly be rejected as indefinite under 35 U.S.C. § 112, second paragraph.

2) Whether Goldhaber discloses each and every element of claims 1-6 and 8-10, as required under 35 U.S.C. § 102(b).

Grounds of Rejection No. 3

Independent claim 7 is directed to a method for distributing information or services through a computer or a cellular network, and recites the step of crediting an account, which includes certain recited substeps. The Examiner acknowledges that Goldhaber fails to disclose “that crediting an account associated with said certain recipient comprises the substeps of defining the time it has taken for said indication to be received and crediting said account by an amount which is inversely proportional to said time.” (December 15, 2005 Detailed Action, page 7.) However, the Examiner contends that Goldhaber discloses the use of time-sensitive incentives such as coupons and relies on the Examiner’s own personal knowledge that it would have been obvious “to extend Goldhaber to disclose time-sensitive credits, **perhaps** based on a subscriber’s response time.” (Emphasis added.)

Appellant submits that Goldhaber’s disclosure of coupons does not make obvious the claimed feature of “crediting said account by an amount which is inversely proportional to said time,” where the time is “the time taken for said indication to be received.” Goldhaber neither discloses, nor suggests, that its coupons are time-sensitive. And even assuming that Goldhaber were to suggest that the coupons were time-sensitive, such coupons typically have full value until their expiration date, after which they have no value, a step function. Thus they do not decrease in value with time. They either have value or not. As a result, it would not have been obvious to one of ordinary skill to arrive at assigning value to the coupon which is inversely proportional to the time taken to receive an indication that a recipient accessed a piece of information, a declining ramp function.

Appellant submits that the Examiner has impermissibly relied on the disclosure of the present application “to reconstruct the patentee’s claimed invention from prior art by using the patentee’s claim as a ‘blueprint’ when prior art references require selective combination to render obvious a subsequent invention.” (*Dow Chemical Co.*, 5 U.S.P.Q. 2d at 1532, *citing Interconnect Planning Corporation v. Feil*, 774 F.2d 1132, 227 U.S.P.Q. 543, 551 (Fed. Cir. 1985).) Further, the Examiner’s example does not work in the same way as the claimed invention.

Goldhaber at the time of the invention would not be motivated to modify Goldhaber's coupons to be valued on an inverse time-variant basis or a ranking of responses. Therefore, the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness.

For all of the reasons set forth above, the rejections of claims 1-13 should be reversed. Appellant respectfully requests that the application be remanded to the Primary Examiner with an instruction to withdraw the rejections, and pass the case to allowance.

Respectfully submitted,

By 

Richard J. Katz

Registration No.: 47,698

Dated: August 15, 2006

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APPENDIXES

EVIDENCE APPENDIX

All evidence is in the record.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings for this matter.